IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1682 OF 2004

Jolly Technologies Pvt. Ltd.
through Rupesh Kokal,
Branch Manager,
having his office at
701, Gateway Plaza,
Hiranandani Garden, Powai,
Mumbai - 400 076. ... Petitioner

V/s.

(1) Shri Wadkar,
Assistant Commissioner of Police,
Powai Division.

(2) Shri Indurkar,
Inspector of Police,
Powai Police Station.

(3) Shri Chinchalkar,
Inspector of Police,
Cyber Crime Cell,
Bombay.

(4) Smt. Pradnya Saravade,
DCP, Enforcement.

(5) Commissioner of Police for
Greater Bombay,
Mumbai.

(6) State of Maharashtra.

(7) Central Bureau of Investigation,
Kitab Mahal,
Mumbai. ... Respondents

Mr. S. V. Marwadi & Vivek Jollygore for the petitioner.

Mr. D. S. Mhaispurkar, APP for the State.

ALONG WITH

CRIMINAL APPLICATION NO. 4384 OF 2004

Jolly Technologies Pvt. Ltd.
through Rupesh Kokal,
Branch Manager,
having his office at
701, Gateway Plaza,
Hiranandani Garden, Powai,
Mumbai - 400 076. ... Petitioner

V/s.

(1) Shri Wadkar,
Assistant Commissioner of Police,
Powai Division.

(2) Shri Indurkar,
Inspector of Police,
Powai Police Station.

(3) Shri Chinchalkar,
Inspector of Police,
Cyber Crime Cell,
Bombay.

(4) Smt. Pradnya Saravade,
DCP, Enforcement.

(5) Commissioner of Police for
Greater Bombay,
Mumbai.

(6) State of Maharashtra. ... Respondents.

AND

Sudha Easwaran Iyer,
77/551, M.H.B.Colony,
Sarvodaya Nagar,
Jogeshwari (East),
Mumbai - 400 060. ... Intervener

Mr. S. V. Marwadi & Vivek Jollygore for the petitioner.

Mr. D. S. Mhaispurkar, APP for the State.

Mrs. N. S. Nappinai with Ms. Jayashree Manjrekar for intervener.

CORAM : SMT. RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 15th February, 2007

ORAL JUDGMENT:- (Per Smt. Ranjana Desai J.)

The petitioner is a Software Development Company. It serves as an Offshore research and development unit for Jolly International. The engineers of the company work on key research projects including the design and implementation of innovative new features for Jolly International product line. It is the case of the petitioner that Jolly international maintains all copyright with regard to the product line and is protected by United States International Copyright laws.

2. According to the petitioner, one Ms.Sudha Iyer who has filed an intervention application in this case was employed by the company as a trainee on trial basis. Ms.Sudha Iyer had entered into an agreement with the petitioner promising that all secrets of the company would be kept intact. According to the petitioner relying upon her representation, Ms.Sudha Iyer was

assigned the work as a trainee to enable her to learn various technologies developed by the company. According to the petitioner, as per the agreement she was prohibited from violating confidentiality and she was required to abide by all the rules and policies of the petitioner.

3. According to the petitioner on 19/07/2004, Ms.Sudha Iyer was informed that she had been moved from the Print Studio research and development project to a new project and she should no longer work on any Print Studio source code or access any document related to that project. However, on 19/07/2004 Ms.Sudha Iyer exported the confidential files that she had obtained in the company via her personal e-mail account. She moved various confidential files of the company from the Manager’s account to her personal account by way of which she could open and download the confidential files of the company from any source outside the company.

4. According to the petitioner as Ms.Sudha Iyer moved the confidential information saved under the Prints Studio project including the important information related to the Identity Cards of Navy and Army of the

United States and forwarded it by e-mails to her own e-mail account, the petitioner filed a complaint with the Cyber Investigation Cell at Worli. As the police did not register the FIR, the petitioner has filed this petition praying that the police be directed to register the offence in respect of the petitioner's complaint.

5. We have heard Mr.Marwadi, the learned counsel appearing for the petitioner. Mr.Marwadi reiterated the case of the petitioner stated in the petition. He submitted that the police have not registered the offence though it is disclosed in the complaint. They have not carried out the necessary inquiry. They have not seized the computer used by Ms.Sudha Iyer. He submitted that Ms.Sudha Iyer has committed the offence of hacking under Section 66 of the Information Technology Act-2000 (for short,"the said Act"). There is a likelihood of wrongful loss to the petitioner because the value of the information which is removed by Ms.Sudha Iyer has been diminished. He submitted that Ms. Sudha Iyer has removed some information without the consent of the petitioner and with the connivance of the Manager and therefore, the offence under Section 66 of the said Act is clearly made out.

Mr.Marwadi contended that no attempt was made by the police to trace the information forwarded by Ms.Sudha Iyer to her e-mail account. Mr.Marwadi submitted that on 13/01/2005 the petitioner has received a letter issued by the investigating officer stating that no offence under the said Act is disclosed. Mr.Marwadi submitted that the police have failed in their duty and therefore, appropriate directions be issued to the police.

6. We have also heard the learned APP Mr.Mhaispurkar. He submitted that the allegation that the police have not carried out the proper inquiry, is baseless. He drew our attention to the affidavit of Mr.Pravin Chinchalkar, Inspector of Police, Cyber Crime Investigation Cell, Crime Branch, Criminal Investigation Department, Mumbai. He submitted that under Section 65 of the said Act only concealing, destroying or altering a source code which is required to be maintained by law, amounts to an offence. The learned APP pointed out that the inquiry conducted by the police does not disclose any offence under Sections 65 or 66 of the said Act. He submitted that under Section 43 of the said Act, down-loading, copying or extracting any data, computer data base or

information from such computer or computer system without permission of the owner or any other person who is in-charge of the Computer is a civil wrong and remedy of damages by way of compensation is provided. He submitted that no Criminal offence is disclosed during the inquiry and if there is any civil wrong, the petitioner can always approach the Civil Court for compensation. The learned APP submitted that the petition is therefore liable to be dismissed.

7. We have considered the submissions of both sides in the light of the provisions of the said Act. Complaint of the petitioner is dated 20/07/2004. It is the case of the police that the inquiry conducted on the basis of the material furnished by the petitioner, does not disclose any offence under the said Act. The affidavit of Mr.Chinchalkar filed during the pendency of the inquiry indicates that according to the police, the petitioner had not furnished any particulars pertaining to the Software i.e. allegedly the article of theft. As regards the copyright violation no particulars of the alleged software, the ownership of the same and the particulars of the file have been furnished by the petitioner, its owner and employees No specific

information with regard to the actual software or source code to which the petitioner is claiming proprietary right has been furnished by the petitioner. The petitioner's case, however, is that all necessary particulars and information has been furnished by the petitioner to the police.

8. In the peculiar facts and circumstances of the case and considering the fact that the complaint of the petitioner is of 2004, we are not inclined to issue any directions to the police as prayed for in the petition. In our opinion, however, the petitioner cannot be prevented from filing any private complaint on the basis of the requisite material and information, before a Magistrate having jurisdiction to entertain it if the petitioner so desires. The petitioner can also, adopt any appropriate proceedings to claim any damages if, the petitioner so desires. We have not expressed any opinion on the merits of the case.

9. In the circumstances, we pass the following order.

O R D E R

(i) The petition is dismissed.

(ii) The petitioner, however, will be at liberty to file a private complaint before the Magistrate having jurisdiction as regards the subject matter of this petition if the petitioner so desires. If such complaint is filed, the learned Magistrate shall deal with it in accordance with law without being influenced by anything said in this judgment.

(iii) The petitioner will also be at liberty to file a suit or any other proceedings contemplated in law for damages if the petitioner so desires. If the petitioner files any such proceedings, the learned Judge seized of the same shall deal with it without being influenced by anything said in this judgment and in accordance with law.

(iv) Needless to say that Criminal Application No.4384 of 2004 does not survive and is disposed of as such.

[SMT.RANJANA DESAI, J.]

[ANOOP V. MOHTA, J.]